

## **Indiana Public Defender Commission Meeting Minutes**

September 24, 2008

Chairman Mark Rutherford called the business meeting to order at 2:08 p.m. Commission members in attendance were Susan Carpenter, Bettye Lou Jerrel, Peter D. Nugent, Judge Diane Ross Boswell, Rep. Amos Thomas and David Hensel. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Sen. Joseph Zakas, Sen. Timothy S. Lanane, and Rep. Phil Hoy.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Hon. Thomas K. Milligan, Montgomery Circuit Court, Chief Public Defender Robert Hill, Ann Sutton, Ray Casanova and Matthew Gerber of the Marion County Public Defender Agency, and Stephen Owens, Vanderburgh County Chief Public Defender.

**Proposal Requesting Variance from Standard J's Caseload Maximums.** Marion County Public Defender Agency is requesting a variance from Standard J's caseload maximum for class D felonies in a 12-month period. The current maximum is 150 cases; however, a time study performed by MCPDA showed that the public defenders could handle 225 class D felonies. Robert Hill, Marion County Chief Public Defender, requests that the proposal be added to the agenda for the Commission's December 10<sup>th</sup> meeting and, if enacted by the Commission, that the change be effective January 1, 2009. Chairman Rutherford thanked Robert Hill for his proposal and indicated it would be on the agenda in December. Commissioner David Hensel asked if there would be additional data to examine in December and Robert Hill said yes, they are still conducting the time study. He hopes to have a PowerPoint presentation at the December meeting. David Hensel wanted clarification that the variance was for class D felonies only and Robert Hill said yes.

**Approval of Minutes from 6/25/08 Meeting.** Chairman Rutherford presented the minutes from the June 25, 2008 meeting for approval. Peter Nugent moved for approval of the minutes as presented. Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

**Annual Report 2007-2008.** Staff counsel Deborah Neal stated the annual report is ready to be published and asked if there were any questions. The Commission distributed more than \$13 million dollars for non-capital reimbursements and \$755 thousand for capital reimbursements for the period. All but \$13,000 of the Public Defense fund was used. Mark Rutherford asked for a motion to accept and publish the annual report. Peter Nugent made the motion and Judge Boswell seconded. The motion passed.

**Approval of Thirteenth Annual Federal Habeas Corpus Seminar for CR24.** Ms. Neal explained that Paula Sites, Assistant Executive Director of the Indiana Public Defender Council, had sent the Commission the information regarding this seminar. In Ms. Sites' opinion the seminar should qualify for twelve hours of specialized training on the defense of capital cases. Larry Landis explained that Ms. Sites was very qualified to judge the merits of a death penalty CLE. Amos Thomas made a motion to approve this seminar sponsored by the Administrative Office of the United States Courts for purposes of capital attorney qualification under CR24. David Hensel seconded the motion. The motion passed.

**Report on Counties Receiving 90-Day Notice in 2007.** Deborah Neal reminded the Commission that county councils' appropriated increases for public defense 2009 budgets, to cure non-compliance with Commission Standards, will be reflected in the 1<sup>st</sup> quarter requests for reimbursement submitted at the June 2009 meeting. Staff counsel will keep close watch on all 90-Day counties to make sure that any promises a county makes to the Commission are kept. The Commission has the authority to suspend reimbursements for non-capital expenditures for any county that is out of compliance.

**Clark County:** Ms. Neal reported that the Clark County Public Defense Board and Chief Public Defender are working with their county council to come into compliance with Commission Standards. Clark County Council has approved the request from Judge Carmichael for additional monies for her budget to compensate counsel who agree to represent CHINs and individuals involved in termination of parental rights cases in her court. This means the public defender office will no longer need to provide counsel for these cases and this should reduce caseloads. They expect to be in compliance after this change takes effect. If you examine their current caseloads, assuming nothing else changes, removing the CHINS and TPR cases from the public defender agency should bring the county into compliance. It is staff counsels' opinion that, since the county has a plan for achieving compliance and has approval from the county council to put the plan into effect, Clark County be reimbursed this quarter.

Peter Nugent commented that the Commission has discussed Clark County at every meeting since he was appointed to the Commission. All counties are having money difficulties now. When does the Commission draw the line? We know the 90-Day counties are trying to achieve compliance but when do we say enough is enough? Bettye Lou Jerrel said if you examine the public defenders' stats, they are not that far out of compliance. It is apparent that they are making an effort. Clark County's public defender agency is very small and there is little they can do. Judge Boswell asked "So are we then saying that we will consider a county to be in compliance if they are only a little over our standard?" Mark Rutherford reminded the Commission that the commentary to Standard J states the Commission used the language "should generally not be assigned" when it promulgated Standard J to avoid the situation where a county forfeits reimbursement merely because one public defender was assigned a case or two in excess of the maximum. Larry Landis said the standard is based on a rolling twelve months so being a little over the standard for one quarter does not mean the county will be out of compliance for the 12 months. You can tell Clark County's stats are trending in the right direction. Taking the CHINs cases away from the agency should take care of the problem. Mark Rutherford said he tended to agree with Peter Nugent; The Commission does not want to send the wrong message to those counties that are in compliance by rewarding those counties that are not in compliance.

Bettye Lou Jerrel made the motion to approve reimbursing Clark Count for its 2<sup>nd</sup> quarter non-capital expenses provided staff counsel sends them a letter highlighting the Commission's concern with its continued non-compliance. This motion was seconded by Susan Carpenter. The motion passed. Peter Nugent voted against.

**Jasper County.** Ms. Neal reminded the Commission that Jasper County was dealing with an increase in felony drug cases and related CHINs cases resulting from a federal drug sting operation concentrating on the stretch of I-65 that runs through Jasper County. Both judges and the Jasper County Public Defender Board chairman came to the June meeting and reported on their request to the county council for an additional four part-time public defenders for felony cases and two part-time public defenders for non-reimbursable cases. The council will not make a decision until late September. The

public defenders' case stats have increased. Bettye Lou Jerrel said the county needs to know they must solve their problem prior to the end of the year. Ms. Neal stated Jasper County and the other 90-Day counties had received the 90-Day Notice in 2007 and have had 21 months to come into compliance but due to a growing number of defendants qualifying for a public defender, the counties have been unable to do so. Peter Nugent said if the Commission considers 1.1 FTE to be a gray area, then the caseload stats show two of Jasper County's five public defenders were well over 1.1 FTE before the drug cases hit.

Mark Rutherford asked for questions, comments or motions regarding Jasper County. Bettye Lou Jerrel wondered why staff counsel had not called the county auditor to ask what happened at the council meeting. Jeff Wiese said he had spoken to Ed Dumas, Chairman of the Jasper Public Defender Board and had been told the county council was not going to act on his request until after our Commission meeting so even if he called today, there would be no decision to report. Ms. Jerrel said they are playing games with us and suggested maybe we should not provide reimbursement until we know that the county council is willing to fund their public defense program. She commented that this was a very serious time for all counties due to the property tax issue and that county councils are saying "no" to everyone who is asking for more money. Ms. Jerrel asked whether the Commission could suspend reimbursements and see what happens. Chairman Rutherford stated the Commission could certainly entertain a motion to provide reimbursement contingent on a county council taking a certain action. David Hensel asked staff council what counties they felt were working with the Commission in good faith. Deborah Neal said she has reservations about Steuben County's commitment to the program. She visited the county this quarter and met with several public defenders, the auditor, chairman of the public defender board, a council member and two judges, and left with no firm commitment from the group that something would be done to bring the county into compliance. After that visit, Hugh Taylor, board chairman, spoke to Jeff Wiese and reported that he had been authorized to hire a new public defender.

Jeff Wiese offered his opinion that the Commission may not want to distinguish between counties that are working in good faith with the Commission and those that are not. If there is no decision from a county council to further fund public defense expenses, he believes the Commission should make all reimbursements for 90-Day counties contingent on adequate steps being taken by the county council. The Commission can always pay a county's suspended quarterly request for reimbursement later. Mr. Wiese realized this is a hard line to take but this would send the message that the Commission is serious about compliance with its standards and that enough time has passed to reach compliance.

Deborah Neal said regarding Steuben County the Commission may want to suspend reimbursements until the Commission receives in writing that they have been given the authority to hire this additional PD. Ms. Neal is also concerned about Henry County. This county just received the 90-Day Notice in July 2008 for being out of compliance on caseload standards and the chief public defender's salary. They have never paid the chief public defender 90% of the county prosecutor's salary which is required by Commission standards. To be in compliance, Henry County would have to increase the chief public defender's salary approximately \$30,000. Seven or eight years ago when this Commission mandated that a chief public defender should be paid 90% of a county prosecutor's salary, it allowed program counties time to phase in this salary increase. Henry County was in the program at that time. When she visited Henry County this month, Deborah Neal was asked if the county could

phase in the salary increase. Ms. Neal told them she did not know if that option was still available. In the response to the 90-Day Notice, Mark Stamper, Henry County Chief Public Defender, reported that the county council stated it did not have the money to pay this salary increase. They might find it in November but could not promise anything. To summarize, in staff counsels opinion, Henry and Steuben Counties should have their 2<sup>nd</sup> quarter requests for reimbursement suspended.

Mark Rutherford asked if in staff counsel's opinion that the other 90-Day counties were making progress toward compliance. Deborah Neal said these counties have had in most cases at least eighteen months to come into compliance. The Commission allowed them this time because when the notice was initially sent, the county was in the middle of a budget year, so any changes would not take place until the first quarter of the following year. The 1<sup>st</sup> quarter reports from the counties are not due until the June meeting of the Commission. For that June 2008 meeting, eight counties were asked to attend and explain why they were still not in compliance. The Commission needs to decide if it wants to do the same thing again (have the counties explain why they are not in compliance and present a plan for achieving compliance) but then the Commission will be in the same position of not knowing if any changes employed by a county actually has an effect on curing the non-compliance issues until June 2009 when the Commission receives the 1<sup>st</sup> quarter requests for reimbursement.

Bettye Lou Jerrel said in her experience, county councils tend to be influenced more by what they hear from county residents rather than any political group. Judge Boswell stated it is not politically expedient to say we're not going to pay for attorneys for the indigent. Politicians may like to say they are going to cut spending on public defense but they cannot do that. Judge Boswell stated it appears like counties are daring the Commission to make a decision before the county council decides what to do. It might be best to hold the money and give it to the counties after the council takes action.

David Hensel made the motion that Jasper County not be reimbursed for its 2<sup>nd</sup> quarter non-capital expenditures and that the county be invited to the December Commission meeting to show the results of any county council decision regarding public defense; that if a satisfactory decision made by the Jasper County Council will bring the county into compliance, the Commission will consider paying its 2<sup>nd</sup> quarter claims. Peter Nugent seconded this motion. Larry Landis requested clarification on whether the motion meant 2<sup>nd</sup> quarter claims would be denied. Mark Rutherford stated the motion would allow the Commission to pay the 2<sup>nd</sup> quarter claims in December if the county makes a satisfactory showing to the Commission. Peter Nugent clarified that the motion would not mandate the Commission to pay the 2<sup>nd</sup> quarter claims, but it would allow them to be paid. Peter Nugent said it might make a difference on when the county council makes their decision. If a council makes a decision to increase funding for public defense the day before the Commission's December meeting, in his opinion, it shows lack of interest for the 2<sup>nd</sup> quarter reimbursement on the part of the county. Chairman Rutherford called for a vote on the motion. The motion passed unanimously.

**Montgomery County.** Judge Thomas Milligan thanked Larry Landis for his help with the issues Montgomery County is facing. He then reported that he had proposed adding these positions in October: a part time public defender and a public defense administrator who will keep track of appointments and keep better records regarding assignment of cases. This will help separate the reimbursable cases from the non-reimbursable cases. In addition, he proposed adding an additional two part-time public defenders in January. This will bring the number of public defenders up to nine. These proposals were made to the Montgomery County Council. The Judge expects some decision at the

council's next meeting on September 30<sup>th</sup>. The additional public defender they hope to add in October will not bring the county into full compliance but the additional public defenders who start in January should allow the county to comply with the Commission's Standards.

Peter Nugent asked the Commission about putting Montgomery County in the same position as Jasper County because neither has received a decision from its county council on funding a plan for achieving compliance. Mr. Nugent said to be consistent any motion regarding Montgomery County should say "if you do this—the Commission will consider paying the 2<sup>nd</sup> quarter reimbursements in December." Jeff Wiese said in his opinion consistency is important. Although the Montgomery County Judge and certain public defenders have worked hard to get approval of their plan, the county council has not passed a budget that would fund the necessary additions. Mr. Wiese further stated that suspending reimbursements this quarter could send the message to the county council that the Commission is serious about compliance with its Standards. Judge Milligan said the council could respond by telling the Commission to just keep its money. Larry Landis said it is important to remember that the Commission's reimbursements are really leverage money to coerce a county to commit money for public defense which is not a politically popular program. The Commission needs to be careful with a county like Montgomery that it knows is close to throwing in the towel but has some individuals really trying to sell the public defense program. Larry Landis recommends approving reimbursement with the condition that Montgomery County Council does provide the additional money needed to fund the public defense program. Susan Carpenter said it is important to remember they have a plan and are actively trying to implement it. David Hensel said he is worried that suspending reimbursements to Montgomery County would cut the legs out from under Judge Milligan. Judge Boswell asked what will happen in the county if we suspend reimbursements. Judge Milligan said he is not sure how it will affect the proposed plan. The county would continue to provide public defenders. It would definitely affect the 2009 contract negotiations with the public defenders.

Susan Carpenter made the motion to authorize staff counsel to reimburse Montgomery County for its 2<sup>nd</sup> quarter non-capital expenditures once the county shows the Commission written proof that they have hired an additional public defender who will start October 1 plus two additional public defenders who will start January 1, 2009. Bettye Lou Jerrel seconded the motion. Deborah Neal asked if this motion gave staff counsel authority to pay Montgomery County's 2<sup>nd</sup> quarter claims once proof is received or should the proof be brought to the December Commission meeting. Mark Rutherford said in his opinion staff counsel could easily interpret any county resolution regarding additional public defenders, so in this instance staff counsel could reimburse Montgomery County once satisfactory proof was received. The motion passed.

**Scott County.** Deborah Neal explained Scott County has already said that they had hired additional attorneys in January 2008 and requested additional time to spread out the cases to come into compliance. The stats show that progress has been made. Only two attorneys are still out of compliance; that is down from six attorneys out of compliance in June. It is staff counsel's opinion that, in light of the effort being made without additional public defenders, Scott County should be reimbursed for its 2<sup>nd</sup> quarter non-capital expenditures. Bettye Lou Jerrel made the motion to reimburse Scott County for its 2<sup>nd</sup> quarter non-capital request for reimbursement. David Hensel seconded the motion and it passed.

**Shelby County.** Deborah Neal said Shelby County's public defense program has improved from having five public defenders out of compliance in the 1<sup>st</sup> quarter to three this quarter. The three attorneys showing FTEs above 1.000 have improved their caseload stats. Jim Lisher, Shelby County Chief Public Defender, has been in contact with staff counsel and informs us that the county council is not approving a 2009 budget until late November. Bettye Lou Jerrel asked if staff counsel would find out when counties had to have their budgets ready. Staff counsel agreed to do this. Bettye Lou Jerrel said Shelby County has improved without any additional appropriations from the county council and she made the motion to reimburse Shelby County for its 2<sup>nd</sup> quarter non-capital expenditures. Susan Carpenter seconded this motion and it passed. Peter Nugent abstained from the Shelby County vote.

**Steuben County.** Hugh Taylor, Shelby County's Public Defender Board chairman, has informed Jeff Wiese that the county council has authorized him to add a public defender in January 2009. Mark Rutherford said the county caseload stats are still a little high. Susan Carpenter asked if one additional public defender would bring the county into compliance. Staff counsel was able to show that if nothing else changes, one additional PD would bring them into compliance. Larry Landis said for the Commission to be consistent with its decisions about the 90-Day counties, it should authorize reimbursement to Steuben County if it provides proof that they have authority to add this public defender. Bettye Lou Jerrel made a motion to reimburse Steuben County for its 2<sup>nd</sup> quarter non-capital expenditures contingent on Steuben County providing the Commission with proof that they have hired and funded an additional public defender. Deborah Neal asked for clarification on whether staff counsel could issue reimbursement or if the Commission would want to see any proof submitted by Steuben County at the December meeting. The motion was amended to authorize staff counsel to reimburse Steuben County for its 2<sup>nd</sup> quarter non-capital expenditures once the county shows satisfactory written proof that the hiring of an additional public defender has been approved and funded. Susan Carpenter seconded this motion and it passed.

**Vanderburgh County.** Stephen Owens, Vanderburgh County's Chief Public Defender, reported that the county council did not approve his plan to add a paralegal and investigator. This plan would have allowed the county to have more public defenders that were adequately staffed. Mark Rutherford thanked Stephen Owens for coming to the meeting. Deborah Neal distributed to the Commission members Mr. Owens's copies of the 3<sup>rd</sup> quarter 2008 caseloads which show that all of the public defenders are in compliance with the exception of one, Mr. Reisz, who is only slightly out of compliance. David Hensel made the motion to reimburse Vanderburgh for its 2<sup>nd</sup> quarter non-capital expenditures. Susan Carpenter seconded this motion and it passed.

**Report on Counties Receiving 90-Day Notices in 2008.** Deborah Neal explained five counties were sent 90-Day Notices in July 2008. They are Henry, Jennings, Knox, Kosciusko and LaPorte.

**Henry County.** Deborah Neal said she has already explained her concern with Henry County's response to the 90-Day Notice. Judge Boswell made a motion to suspend Henry County's 2<sup>nd</sup> quarter reimbursement for non-capital expenditures. Peter Nugent seconded this motion. The motion passed.

**Jennings County.** Judge Webster has been in contact with Deborah Neal and he said Jennings County is aware of the need for additional public defenders (one of their current PDs is quite elderly) but are having trouble recruiting experienced public defenders. Judge Webster said some of the inexperienced public defenders should be able to start handling major felonies and the stats should

improve. If the numbers don't he will try to recruit another public defender. Staff counsel recommends that they be reimbursed this quarter and we review them again in December. Amos Thomas made the motion to reimburse Jennings County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Susan Carpenter seconded the motion. The motion passed.

**Knox County.** Deborah Neal has visited Knox County several times over the past year. They are making an effort to comply with the Standards. Knox County has 12 public defenders. Three are currently out of compliance and their numbers are increasing. Deborah Neal said she has pointed out to Knox County that there needs to be better supervision on who is assigned a case. They may not need any additional public defenders; they may simply need to spread out the caseload more evenly. Susan Carpenter made the motion to reimburse Knox County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Bettye Lou Jerrel seconded the motion. The motion passed.

**Kosciusko County.** Deborah Neal said since they received the 90-Day Notice, Kosciusko County public defender's caseload FTEs have decreased. One of the problems Kosciusko has faced is a public defender on maternity leave. She has returned to work so this should ease the problem. She recommends paying their 2<sup>nd</sup> quarter claims. Susan Carpenter made the motion to reimburse Kosciusko County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Judge Boswell seconded the motion. The motion passed.

**LaPorte County.** Deborah Neal said she has explained to the chief public defender how cases are weighted and the importance of spreading out the caseload more fairly. In addition, LaPorte County has submitted a plan for coming into compliance which includes adding two additional public defenders. David Hensel made the motion to reimburse LaPorte County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Bettye Lou Jerrel seconded the motion. The motion passed.

**Requests for 40% Reimbursement in Non-capital cases.** Robert Hill, Marion County Chief Public Defender, explained that he discovered that the prior administration had been engaged in a practice of only reporting the maximum number of class D felony cases in a quarter, regardless of what had actually been assigned. If the number of class D felony cases assigned in that quarter exceeded the amount permitted by the Commission's Standard J, the additional appointed cases were held over for reporting in the next quarter. In this way it appeared that the class D felony public defenders were always in compliance. He immediately discontinued the practice and Marion County is now reporting all class D felony cases in the quarter in which they are assigned. Class D felonies were reassigned wherever possible to lower the D felony public defender's caseloads.

The Commission addressed the following counties' 2<sup>nd</sup> quarter requests for reimbursement of non-capital expenses. Deborah Neal said the Public Defense Fund balance was not sufficient to reimburse the claims at 40%. The claims were pro rated at 34%. If, in December, any of those counties who have had their 2<sup>nd</sup> quarter claims suspended, qualify to have the 2<sup>nd</sup> quarter claims paid, they will be paid at the 34% prorated amount. Bettye Lou Jerrel made the motion to pay all program county's 2<sup>nd</sup> quarter non-capital claims except for Henry, Jasper, Montgomery and Steuben which have had their claims suspended, and if Henry, Jasper, Montgomery or Steuben fulfill the Commission's requirements and qualify to have their 2<sup>nd</sup> quarter claims paid, such payments will be at the 34% prorated amount. Susan Carpenter seconded this motion and the motion passed.

| INDIANA PUBLIC DEFENDER COMMISSION  |                   |                       |       |                      |                   |                 |
|---|-------------------|-----------------------|-------|----------------------|-------------------|-----------------|
| Second Quarter (April 1, 2008 - June 30, 2008) Requests for Reimbursements in Non-Capital Cases |                   |                       |       |                      |                   |                 |
| 9/24/2008 AMENDED   |                   |                       |       |                      |                   |                 |
| COUNTY  | Total Expenditure | Adjust Non-Reimbrsble | % Adj | Eligible Expenditure | If 40% Reimbursed | Pro Rata at 34% |
| ADAMS   | \$74,373.59       | \$19,832.96           | 27%   | \$54,540.63          | \$21,816.25       | \$18,543.81     |
| ALLEN   | \$734,490.39      | \$36,752.19           | 5%    | \$697,738.20         | \$279,095.28      | \$237,230.99    |
| BENTON  | \$17,394.65       | \$5,398.34            | 31%   | \$11,996.31          | \$4,798.52        | \$4,078.75      |
| BLACKFORD   | \$27,256.78       | \$2,586.50            | 9%    | \$24,670.28          | \$9,868.11        | \$8,387.90      |
| CARROLL   | \$0.00            | \$0.00                |       | \$0.00               | \$0.00            | \$0.00          |
| CLARK   | \$126,239.37      | \$23,068.83           | 18%   | \$103,170.54         | \$41,268.22       | \$35,077.98     |
| CRAWFORD  | \$0.00            | \$0.00                |       | \$0.00               | \$0.00            | \$0.00          |
| DECATUR   | \$21,475.00       | \$7,870.93            | 37%   | \$13,604.07          | \$5,441.63        | \$4,625.38      |
| FAYETTE   | \$135,579.91      | \$32,131.65           | 24%   | \$103,448.26         | \$41,379.30       | \$35,172.41     |
| FLOYD   | \$115,188.74      | \$22,154.06           | 19%   | \$93,034.68          | \$37,213.87       | \$31,631.79     |
| FOUNTAIN  | \$28,179.39       | \$6,929.36            | 25%   | \$21,250.03          | \$8,500.01        | \$7,225.01      |
| FULTON  | \$62,562.08       | \$21,160.70           | 34%   | \$41,401.38          | \$16,560.55       | \$14,076.47     |
| GRANT   | \$181,953.00      | \$19,426.72           | 11%   | \$162,526.28         | \$65,010.51       | \$55,258.94     |
| GREENE  | \$65,406.41       | \$11,353.80           | 17%   | \$54,052.61          | \$21,621.04       | \$18,377.89     |
| HANCOCK   | \$107,301.11      | \$29,163.00           | 27%   | \$78,138.11          | \$31,255.24       | \$26,566.96     |
| HENRY   | \$90,503.61       | \$12,430.19           | 14%   | \$78,073.42          | \$31,229.37       | \$0.00          |
| HOWARD  | \$368,115.33      | \$68,965.63           | 19%   | \$299,149.70         | \$119,659.88      | \$101,710.90    |
| JASPER  | \$51,833.85       | \$14,495.91           | 28%   | \$37,337.94          | \$14,935.18       | \$0.00          |
| JAY   | \$57,086.52       | \$9,133.84            | 16%   | \$47,952.68          | \$19,181.07       | \$16,303.91     |
| JENNINGS  | \$57,637.13       | \$14,532.56           | 25%   | \$43,104.57          | \$17,241.83       | \$14,655.55     |
| KNOX  | \$135,402.42      | \$44,720.13           | 33%   | \$90,682.29          | \$36,272.92       | \$30,831.98     |
| KOSCIUSKO   | \$127,710.49      | \$38,109.51           | 30%   | \$89,600.98          | \$35,840.39       | \$30,464.33     |
| LAKE  | \$831,517.58      | \$1,189.58            | 0%    | \$830,328.00         | \$332,131.20      | \$282,311.52    |
| LAPORTE   | \$138,166.74      | \$22,284.96           | 16%   | \$115,881.78         | \$46,352.71       | \$39,399.81     |
| MADISON   | \$375,392.30      | \$33,209.42           | 9%    | \$342,182.88         | \$136,873.15      | \$116,342.18    |
| MARION  | \$4,658,059.14    | \$929,000.00          | 20%   | \$3,729,059.14       | \$1,491,623.66    | \$1,267,880.11  |
| MARTIN  | \$26,803.97       | \$13,420.28           | 50%   | \$13,383.69          | \$5,353.48        | \$4,550.45      |
| MIAMI   | \$0.00            | \$0.00                |       | \$0.00               | \$0.00            | \$0.00          |
| MONROE  | \$335,460.01      | \$55,559.63           | 17%   | \$279,900.38         | \$111,960.15      | \$95,166.13     |
| MONTGOMRY   | \$90,222.30       | \$25,055.55           | 28%   | \$65,166.75          | \$26,066.70       | \$0.00          |
| NEWTON  | \$0.00            | \$0.00                |       | \$0.00               | \$0.00            | \$0.00          |
| NOBLE   | \$90,020.48       | \$15,065.06           | 17%   | \$74,955.42          | \$29,982.17       | \$25,484.84     |
| OHIO  | \$14,877.75       | \$4,947.00            | 33%   | \$9,930.75           | \$3,972.30        | \$3,376.46      |
| ORANGE  | \$44,643.84       | \$13,781.29           | 31%   | \$30,862.55          | \$12,345.02       | \$10,493.27     |
| PARKE   | \$17,366.50       | \$3,427.60            | 20%   | \$13,938.90          | \$5,575.56        | \$4,739.23      |
| PERRY   | \$56,441.00       | \$14,782.56           | 26%   | \$41,658.44          | \$16,663.38       | \$14,163.87     |
| PIKE  | \$53,026.75       | \$14,886.08           | 28%   | \$38,140.67          | \$15,256.27       | \$12,967.83     |
| PULASKI   | \$40,923.58       | \$7,005.70            | 17%   | \$33,917.88          | \$13,567.15       | \$11,532.08     |
| RUSH  | \$47,135.01       | \$19,766.29           | 42%   | \$27,368.72          | \$10,947.49       | \$9,305.36      |
| ST. JOSEPH  | \$531,360.00      | \$70,938.24           | 13%   | \$460,421.76         | \$184,168.70      | \$156,543.40    |
| SCOTT   | \$88,535.11       | \$16,415.32           | 19%   | \$72,119.79          | \$28,847.92       | \$24,520.73     |
| SHELBY  | \$83,153.37       | \$10,859.93           | 13%   | \$72,293.44          | \$28,917.38       | \$24,579.77     |



|              |  |                       |            |                       |                       |                       |
|--------------|--|-----------------------|------------|-----------------------|-----------------------|-----------------------|
| SPENCER      | \$22,895.60  | \$3,911.25            | 17%        | \$18,984.35           | \$7,593.74            | \$6,454.68            |
| STEUBEN      | \$58,798.80  | \$11,474.52           | 20%        | \$47,324.28           | \$18,929.71           | \$0.00                |
| SULLIVAN     | \$30,183.98  | \$10,646.74           | 35%        | \$19,537.24           | \$7,814.90            | \$6,642.66            |
| SWITZERLND   | \$64,649.30  | \$23,176.16           | 36%        | \$41,473.14           | \$16,589.26           | \$14,100.87           |
| TIPPECANOE   | \$367,438.05   | \$79,931.72           | 22%        | \$287,506.33          | \$115,002.53          | \$97,752.15           |
| UNION        | \$0.00   | \$0.00                |            | \$0.00                | \$0.00                | \$0.00                |
| VANDRBRGH    | \$610,786.82   | \$105,931.43          | 17%        | \$504,855.39          | \$201,942.16          | \$171,650.83          |
| VERMILLION   | \$26,547.43  | \$10,972.94           | 41%        | \$15,574.49           | \$6,229.80            | \$5,295.33            |
| VIGO         | \$419,084.72   | \$82,636.42           | 20%        | \$336,448.30          | \$134,579.32          | \$114,392.42          |
| WABASH       | \$50,287.00  | \$8,536.15            | 17%        | \$41,750.85           | \$16,700.34           | \$14,195.29           |
| WARREN       | \$4,334.00   | \$2,022.00            | 47%        | \$2,312.00            | \$924.80              | \$786.08              |
| WASHINGTON   | \$103,031.56   | \$21,552.00           | 21%        | \$81,479.56           | \$32,591.82           | \$27,703.05           |
| WELLS        | \$0.00   | \$0.00                |            | \$0.00                | \$0.00                | \$0.00                |
| WHITE        | \$0.00   | \$0.00                |            | \$0.00                | \$0.00                | \$0.00                |
| WHITLEY      | \$0.00   | \$0.00                |            | \$0.00                | \$0.00                | \$0.00                |
| <b>TOTAL</b> | <b>\$11,866,832.46</b>   | <b>\$2,072,602.63</b> | <b>17%</b> | <b>\$9,794,229.83</b> | <b>\$3,917,691.93</b> | <b>\$3,252,551.33</b> |
| <b>NOTE:</b> | Counties with 2nd quarter request for reimbursement suspended until providing proof from funding source that authority has been given to increase public defense budget to achieve compliance are Henry, Jasper, Montgomery, and Steuben County. |                       |            |                       |                       |                       |
|              |  |                       |            |                       |                       |                       |

**Requests for 50% Reimbursement in Capital Cases.** In *State v. Davis*, a Marion County capital case, Jeff Wiese explained that one of the two capital defense attorneys was not qualified under Criminal Rule 24 in January 2008 when appointed; the attorney became CR24 qualified in March 2008. In the opinion of staff counsel, the Commission has three options: First, approve payment of all claims regardless of whether the attorneys were CR 24 qualified; second, refuse to pay any claims in the capital case because the attorneys were not CR 24 qualified when appointed; or third, refuse payment of claims during any period of time in which both lead and co-counsel were not in compliance with CR 24. Susan Carpenter said she believed that the Commission has only denied reimbursement for those claims that occurred during the times both attorneys were not in compliance with CR 24. Larry Landis also believes this is the case. Robert Hill said he has some knowledge of how this situation arose although it happened prior to his assumption of the position of chief public defender. The attorney in question was appointed to defend Ronald Davis prior to the death penalty request being filed and had developed a relationship with Mr. Davis. Robert Hill said it is his policy not to appoint any attorney to a capital case that is not in compliance with CR 24. Deborah Neal said the amount of this claim is not included in the claims the Commission is reviewing at the current meeting because staff counsel needed this question answered prior to processing the claim for the 3<sup>rd</sup> quarter. Susan Carpenter said it is critically important that the capital defense appointments be in compliance with CR 24 from the moment the death penalty request is filed and the Commission needs to emphasize that principal. Susan Carpenter made the motion to deny all claims in the *Davis* capital case during the period of time in which both attorneys were not in full compliance with CR 24. Peter Nugent seconded the motion and it passed.

Deborah Neal said the total capital reimbursement claims were \$219,534.82 for this quarter. One claim was disallowed due to being submitted 64 days after the 120 day deadline. Also one claim was reduced by \$229.12 due to an expenditure unrelated to public defense. David Hensel made the motion to pay the 2<sup>nd</sup> quarter capital claims totaling \$219,534.82. Judge Boswell seconded his motion and the motion passed.

| Reimbursement Requests in Capital Cases |  |  |                       |
|---|--|--|-----------------------|
| September 24, 2008                      |  |  |                       |
| COUNTY                                  | DEFENDANT  |  | TOTAL                 |
| Lake                                    | Azania 1   |  | \$18,909.55           |
| Marion                                  | Adams 1  |  | \$255.50              |
|   | Turner 1   |  | \$10,295.36           |
|   | Turner 2   |  | \$20,212.23           |
|   | Turner 3   |  | \$7,677.39            |
| Parke                                   | Cottrell 1   |  | \$4,559.98            |
|   | Cottrell 2   |  | \$12,147.23           |
|   | Cottrell 3*  |  | \$28,120.52           |
|   | Cottrell 4**   |  | \$0.00                |
|   | Cottrell 5   |  | \$27,046.62           |
| Spencer                                 | Ward 1   |  | \$1,702.19            |
| Vanderburgh                             | Wilkes 1   |  | \$80,567.55           |
|   | Wilkes 2   |  | \$1,771.20            |
| Vigo                                    | Walker 1   |  | \$3,327.35            |
|   | Walker 2   |  | \$2,942.15            |
| <b>TOTAL</b>                            |  |  | <b>\$219,534.82</b>   |
| <b>Notes:</b>                           |  |  |                       |
| *Cottrell 3 was reduced                 | \$229.12 due to an expenditure unrelated to defense. |  |                       |
| **Cottrell 4 was reduced                | \$994.50 due to expenditures submitted 64 days after |  | the 120 day deadline. |
|   |  |  |                       |

**Counting Appeal Cases.** Deborah Neal requested the Commission examine Standard J's maximum caseload for appeals. The counties of Allen, Howard, Lake, Marion and St. Joseph have supplied staff counsel with information that indicates the time spent on guilty plea appeals and trial appeals is 2:1. Susan Carpenter remembers that when Standard J was written guilty plea appeals were not available. At that time, challenging sentences was done via PCR. Deborah Neal said if the Commission changes this standard, an additional category of cases would be added to the quarterly new case assignment worksheet. Currently, the caseload guideline for appeals is:

| Attorney                          | Maximum Number of Appeals |
|-----------------------------------|---------------------------|
| Full Time with adequate support   | 25                        |
| Part Time with adequate support   | 12                        |
| Full Time with inadequate support | 20                        |
| Part Time with inadequate support | 10                        |

If Standard J is amended to add an additional category of appeals, the caseload guideline would be:

| Attorney                          | Maximum Number of Trial Appeals | Maximum Number of Guilty Plea Appeals |
|-----------------------------------|---------------------------------|---------------------------------------|
| Full Time with adequate support   | 25                              | 50                                    |
| Part Time with adequate support   | 12                              | 24                                    |
| Full Time with inadequate support | 20                              | 40                                    |
| Part Time with inadequate support | 10                              | 20                                    |

Larry Landis said this issue has been discussed at the chief public defender meetings and the consensus is that a guilty plea appeal takes only half the time of a trial appeal. Susan Carpenter made a motion to amend Standard J's caseload standard for appeals cases by adding an additional case category to be called guilty plea appeals and having the caseload guideline for guilty plea appeals be twice that of the current appeal case category. Judge Boswell seconded this motion. The motion passed.

[The issue regarding amending the guidelines for Standard G to clarify compensation of public defenders was tabled until December.]

**Contradictory Language in Non-Capital Guidelines for Standard J.** Deborah Neal explained that currently the guideline for how to count cases that are joined or severed dated 6/8/1995 contradicts the guideline dated 12/16/2004. She suggests simply deleting the 6/8/1995 guideline and removing the following language from the 12/16/2004 guideline fourth: *If cases with separate cause numbers are consolidated for the purposes of docketing in the same court, each case is counted as a separate case.* Susan Carpenter made the motion to amend the Commission Guidelines Related to Non-Capital Cases by removing the Standard J guideline dated 6/8/1995 and deleting the sentence stating "If cases with separate cause numbers are consolidated for the purpose of docketing in the same court, each case is counted as a separate case" from the Standard J guideline dated 12/16/2004. This motion was seconded by David Hensel. The motion passed.

**Update from the Public Defender Council.** Larry Landis stated the Council is proposing legislation that chief public defenders and deputy chief public defenders become state paid employees like county prosecutors and deputy prosecutors.

**Adjournment.** With no further business to discuss, Susan Carpenter made the motion to adjourn the meeting. Bettye Lou Jerrel seconded the motion. The motion passed. Meeting adjourned at 4:36 p.m.

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Mark Rutherford, Chairman

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Date